

AFTER RECORDING RETURN TO:
Miller Nash Graham & Dunn, LLP
Attn: LeAnne M. Bremer
500 Broadway Street, Suite 400
Vancouver, Washington 98660

Space above for recording information only.

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between CLARK COUNTY, a political subdivision of the State of Washington (the “County”), and TEN TALENTS INVESTMENTS 18, LLC, a Washington limited liability company (“Developer”), on the date the last party to this Agreement signs (“Effective Date”).

RECITALS

A. Developer owns certain parcels of real property in unincorporated Clark County Washington (APNs 185726-000 and 185727-000), which are more particularly described in **Exhibit A**, attached hereto and incorporated by reference herein (the “Property”). Developer has received approval for the Skyview Station commercial project on the Property (“Skyview Station”). A conceptual illustration of the currently approved Skyview Station is attached as **Exhibit B**.

B. Developer obtained land use approval under County File No. APL-2019-00001 (Skyview Station) for a mix of commercial uses integrated in a single development with shared amenities and infrastructure, and which will be subject to design standards and other covenants applicable to the entire project to ensure a cohesive, consistent development (“Decision”). The Decision is attached as **Exhibit D**.

C. The Property is also subject to a Concomitant Rezone Agreement dated April 21, 2015, recorded under Auditor’s File Nos. 5167709 and 5170404, as amended by a first Amendment recorded on March 24, 2020, under Auditor’s File No. 5715654 (“Covenant”). The Covenant is attached as **Exhibit F**.

D. Both the Decision and Covenant require Developer to install certain transportation system improvements to serve Skyview Station and the surrounding area.

E. The Decision also sets forth the traffic impact fees Developer must pay upon the County’s issuance of each building permit within Skyview Station.

F. One condition of approval in the Decision, based on the Covenant, requires

Developer to install a traffic signal at the intersection of NE 10th Avenue and NE 141st Street and construct related improvements. In lieu of installation of this traffic signal, the County desires installation of a roundabout as a measure that allows improved safety and mobility in light of planned growth in the vicinity of Skyview Station.

G. The County has issued site plan and engineering approval for the transportation improvements Developer is required to make under the Decision. In consideration for revising its plans to design and construct a roundabout and other transportation improvements, instead of the improvements required by the Decision, Developer is willing to enter into this Agreement and design and construct the roundabout and related improvements in exchange for recalculating the TIFs for Skyview Station, providing for expedited review of its revised plans, and for other consideration as set forth in this Agreement.

H. Pursuant to RCW 36.70B.170(1), Clark County is authorized to enter into a development agreement with any owner of real property within its jurisdiction setting forth the development standards that will apply to and govern and vest the development, use and mitigation related to the development of the real property during the specified term of the agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. **Development Agreement.** This Development Agreement is to be implemented under the authority of and in accordance with RCW 36.70B.170 – 210. It will become a contract between the Parties upon its approval by ordinance or resolution following a public hearing as provided in RCW 36.70B.170, and its execution by the Parties.
2. **Effective Date; Term of Agreement.** The Effective Date of this Agreement is the date on which all of the parties execute the Agreement, and when the Clark County Council has approved this Agreement after holding a public hearing, whichever occurs later. This Agreement will take effect upon the Effective Date and will terminate ten (10) years thereafter, unless extended or terminated by mutual written consent of the Parties.
3. **Current Project Approvals.** The County acknowledges that the Skyview Station project has been previously planned, permitted, designed and approved for a site layout and public right-of-way improvements that include a signalized intersection at NE 141st Street and NE 10th Avenue, a new northbound right lane on NE 10th Avenue from NE 139th Street to the site access across from NE 141st Street, a right turn lane on NE 139th Street for westbound turns to northbound NE 10th Avenue, and a change of the NE 10th Avenue southbound approach to NE 139th Street for a shared through/left lane with associated signal changes. Developer has received preliminary plat and final civil engineering and final site plan approval for these improvements (Current Project Approvals). The Current Project Approvals will not expire before seven years from the effective date of the Decision.

3.1 Prior to the Clark County Council's approval of an amended Covenant as described in Section 13, Developer reserves the right to construct the improvements pursuant to the Current Project Approvals, as required by the Decision, if it determines in its sole discretion that there are unanticipated costs, site impacts, or a prolonged schedule approval for the Revised Transportation Improvements (defined below). In the event that the Developer does not construct the Revised Transportation Improvements as set forth in this agreement, Developer will not be entitled to any consideration offered by the County in this agreement, including but not limited to, the reduction of Traffic Impact Fees, the waiver of review fees, or the agreed terms relating to TIF Credits.

4. **Revised Transportation Improvements.** The Parties agree that in lieu of designing and constructing the transportation improvements required by the Decision, Developer will instead design and install the following improvements, subject to its rights to opt out of these improvements in Section 3 above (collectively, "Revised Transportation Improvements"):

4.1 Install a westbound right turn lane on NE 139th at NE 10th Avenue with an overlap phase;

4.2 Modify the southbound NE 10th Avenue approach to NE 139th Street to provide a shared through/right lane and double left turn lanes, operating as an eight phase signal; and

4.3 Install a roundabout at the site access to NE 10th Avenue, opposite NE 141st Street.

If Developer installs the Revised Transportation Improvements, Developer will not be required to install a new northbound right lane on NE 10th Avenue from NE 139th Street to the site access across from NE 141st Street.

5. **Roundabout Design.** The Parties acknowledge the unique existing conditions of placement of a roundabout at the intersection of NE 141st Street and NE 10th Avenue. The roundabout design is described and illustrated in **Exhibits C** ("Roundabout"). The County agrees that the Roundabout design is feasible and that a review of a preliminary concept plan showed no fatal design flaws. However, the Parties agree that the County may require changes to the Roundabout design described in **Exhibit C**, to comply with Clark County Code, as may be modified through variances and technical road modifications, or other applicable standards. Developer will design and construct the Roundabout at its cost subject to issuance of TIF credits described in Section 11. The County agrees to be guided by the following to the greatest extent possible as it reviews and gives final approval to the Roundabout:

5.1 The Roundabout does not require additional public right-of-way on NE 141st Street and NE 10th Avenue, except for that needed for the site access approach, crosswalk and sidewalks on the east side of the Roundabout.

5.2 The available right-of-way north of the proposed Roundabout, along the adjacent NE 10th Avenue frontage along the mobile home park, north of and adjacent to Tax Parcel 185726-000,

is limited and may not allow for ideal deflection on the southbound approach to the Roundabout. This right-of-way limit is understood by the Parties to be a specific design parameter.

5.3 The Roundabout will have a maximum inscribed diameter of 120 feet in order to minimize impacts to the site and travel direction offset for through traffic on NE 10th Avenue.

5.4 The Roundabout will be designed for emergency vehicle access and will be designed to accommodate WB-67 trucks for the NE 10th Avenue and site access approaches. -

5.5 The Roundabout design will include truck aprons to address the turning requirements of WB-67 trucks.

5.6 The NE 141st Street eastbound approach to the Roundabout will be designed for passenger vehicles and, emergency vehicles, school busses, and single unit trucks. To the extent possible, the Roundabout will also be designed to accommodate large truck traffic.

5.7 As part of the Roundabout, Developer will design the landscaping within the roundabout and associated islands as further described in Section 12.

5.8 The Roundabout design includes changing the NE 10th Avenue approach south to NE 139th Street to a shared through/right lane and double left turn lanes. Developer is not required to make any improvements south of the intersection of NE 10th Avenue and NE 139th Street.

6. **Modifications and Variances.** The County acknowledges that due to the Roundabout design criteria, variances and technical road modifications to standard County engineering and planning requirements will be necessary to fully implement the proposed Roundabout design and the modified Skyview Station site plan. The County agrees to process all variances and technical road modifications through a Type I process. Developer retains the burden to demonstrate that the proposed variance and modification requests meet all applicable criteria.

7. **Review Process.** The Clark County Public Works Director, or his/her designee, will act as a point of contact for the Developer throughout the County's review. In order to implement the Revised Transportation Improvements, Type II post decision review of the Decision, and changes to the final site plan will be required and the County agrees to coordinate the changes to the planning approvals with the engineering review for the Roundabout so that these reviews will occur concurrently to the greatest extent possible. The County agrees to participate in discussions with Clark Public Utilities (water and electrical) and Clark Regional Wastewater District (sanitary sewer) regarding approvals sought by Developer relating to the Revised Transportation Improvements.

7.1 The County agrees to meet with the Developer at least every other week during the County's review period. The County agrees to a maximum of three review iterations of Developer's engineering plans unless Developer has failed to address a previous item of correction. The fourth review will be of the mylars prepared for execution. Each review period by

the County of Developer's engineering plans will be a maximum of 10 workdays, excluding government holidays. The County will also have a maximum of 10 workdays, excluding government holidays, to obtain County signatures on the mylars and schedule a preconstruction conference.

8. **Review Fees.** County will not assess any additional engineering or land use application or review fees associated with any application needed to construct the Revised Transportation Improvements, including engineering fees, post-decision application fees, fees for the amendments to the Covenant and variance and road modification fees.

9. **Traffic Studies.** County will not require any additional traffic studies for the Revised Transportation Improvements unless Developer's site plan, uses or development substantially changes that would normally trigger additional traffic studies under County code.

10. **Traffic Impact Fees.**

10.1 The TIFs will be calculated for Skyview Station based on the approved building area of 79,950 SF. The total amount of TIFs due may increase or decrease depending upon the actual, total gross square footage of the buildings in Skyview Station. The equation in this Section 10.1 will be used to apply a proportionate share of the TIF to each building in Skyview Station to ensure that each building will pay the same TIF per 1,000 square feet of building area. Accordingly, the following equation will be applied to each building to determine the TIF for each building within Skyview Station:

$$((72.58 \text{ ADT}/1,000 \text{ SF}) \times (\text{Building SF})) \times 0.6 \times 0.7 \times 0.85 \times \$930(\text{or then current TIF District Rate}) = \text{TIF Assessment}$$

The equation above includes the trip rate 72.58 ADT/1,000 SF, a pass-by adjustment of 0.6, a 0.7 BEF (Business Enhancement Factor), and a 0.85 standard adjustment.

11. **TIF Credits.** The County agrees to issue TIF credits to Developer for the Revised Transportation Improvements pursuant to UDC 40.630.060, subject to the additional terms set forth below.

11.1 As consideration for this agreement, the Parties agree that the following shall be included in the calculation of TIF credits:

11.1.1 The land value for any right-of-way dedication needed for the Revised Transportation Improvements will be based on Developer's recent appraisal at \$30 per square foot;

11.1.2 Construction costs related to the Revised Transportation Improvements;

11.1.3 Costs associated with the relocation of any existing utilities/infrastructure necessary to implement the Revised Transportation Improvement. Any claim for TIF Credits by

Developer, including for costs set forth herein, will be subject to review and validation by Clark County pursuant to UDC 40.630.060 as well as any applicable policies and procedures; and

11.1.4 Engineering and design costs related to the Revised Transportation Improvements, including design and engineering costs associated with relocating utilities and installing landscaping in and around the Roundabout, provided that these costs shall not exceed fifteen percent (15%) of the validated construction and utility relocation costs described in 11.1 (2-3) above.

12. **Landscape Design and Maintenance.** Developer agrees to install landscaping in and around the Roundabout similar to the design within the existing roundabout at NE 10th Ave. and NE 136th Street. The design will include the following features:

12.1 Hearty, drought-resistant, low-maintenance vegetation;

12.2 Low growing vegetation so vehicle sight distance is not impaired;

12.3 May include landscape rocks;

12.4 May be consistent with design of landscaping within Skyview Station; and

12.5 Landscaping features are not required if they interfere with future access and maintenance to any utilities.

Once Developer installs the landscaping, the County will assume maintenance responsibility for the landscaping, in addition to maintaining the Roundabout and all improvements within the public right-of-way. At Developer's option and expense, Developer may install irrigation equipment within the Roundabout, and if installed, must maintain the irrigation system in good working order. Developer retains the right to perform landscaping maintenance within the Roundabout at any time, at its own expense and without a right of reimbursement from the County, in the event the frequency or quality of the County's maintenance falls below standards acceptable to Developer

13. **Modifications of Existing Approvals.** Developer must seek revisions to the Decision and Covenant as specified in Sections 13.1 and 13.2. Specifically, at the time Developer submits engineering plans for the Roundabout, Developer will file an application under UDC 40.560.020.E. to modify the Covenant, and file an application under UDC 40.520.060.E. subject to a Type II post-decision review, to modify the Decision:

13.1 **Developer to Request Modifications to Covenant:**

13.1.1 Developer shall request that the first sentence of Section 2.b. be modified to replace the words "a building permit" with "an occupancy permit."

13.1.2 Developer shall request that Section 2.b. in the Covenant be modified to state that, in lieu of a traffic signal at the intersection of NE 10th Avenue and NE 141st, the Developer will construct the Revised Transportation Improvements prior to the County issuing a final occupancy permit for development within Skyview Station.

13.1.3 Developer shall request that Section 2.b. in the Covenant be modified to eliminate the following requirement: Modify the northbound NE 10th Ave. between NE 139th Street and the site access to include turn lane(s) for the entire street segment.

13.1.4 Developer shall request that Section 3.a. in the Covenant be modified to remove the phrase “building permits and/or.”

13.2 Developer to Request Modifications to Decision:

13.2.1 Developer shall request that Condition D-2 of the Decision be removed.

13.2.2 Developer shall request that Condition E-1 of the Decision be moved to Section F of the Decision applicable to actions that must occur before occupancy permit issuance.

13.2.3 Developer shall request that Condition E-3 of the Decision be revised to specify that the TIFs will be calculated based on the formula in Section 10 of this Agreement.

13.2.4 Developer shall request that an additional condition, Condition F-4, be added to the Decision to state as follows: Prior to the issuance of an occupancy permit, the applicant shall show compliance with conditions shown in the Concomitant Rezone Agreement (5170404 AGR), as amended.

14. **Environmental and Health Department Review.** For the purposes of this Agreement, no additional SEPA review, stormwater permitting, or health department review is required.

MISCELLANEOUS PROVISIONS

15. **Recitals.** The Recitals contained herein are agreed to be binding obligations on the Parties, as their terms provide.

16. **Counterparts.** This Agreement may be executed in counterparts; however, all signature pages will be recorded together, and the complete recorded Agreement, including **Exhibits A-E**, will constitute the final instrument.

17. **Amendments; Termination.** This Agreement may only be amended by mutual, written agreement of the Parties that is approved by the Clark County Council. This Agreement will terminate upon the mutual agreement of the Parties in writing, which will be recorded, or upon expiration of the Term, whichever first occurs.

18. **County's Reserved Authority.** Notwithstanding anything in this Agreement to the contrary, the County will have the authority to impose new or different regulations to the extent required by a serious threat to public health and safety as required by RCW 36.70B; provided that such action will only be taken by legislative act of the Clark County Council after appropriate public process.
19. **Authorization.** The persons executing this Agreement on behalf of County and Developer are authorized to do so and, upon execution by such parties, this Development Agreement will be a valid and binding obligation of such parties in accordance with its terms. Developer has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby.
20. **Run with the Land.** This Agreement will run with the land and be binding on the Parties' successors and assigns, and will be recorded with the Clark County Auditor.
21. **Public Hearing.** The Clark County Council has approved execution of this Agreement by resolution after a public hearing.
22. **Dispute Resolution.** Should a disagreement arise between the Parties, the Parties agree to attempt to resolve the disagreement by first meeting and conferring. If such meeting proves unsuccessful to resolve the dispute, the disagreement may be resolved by a civil action.
23. **Venue.** This Agreement will be construed in accordance with the laws of the State of Washington, and venue is in the Clark County Superior Court.
24. **Performance.** Failure by any Party at any time to require performance by the other Parties of any of the provisions hereof, will not affect the Parties' rights hereunder to enforce the same, nor will any waiver by a Party of the breach hereof be held to be a waiver of any subsequent breach or a waiver of this clause.
25. **Severability.** If any portion of this Agreement is invalid or unenforceable to any extent, the validity of the remaining provisions will not be affected thereby.
26. **Inconsistencies.** If any provisions of the Clark County Code and land use regulations are deemed inconsistent with this Agreement, the provisions of this Agreement will prevail, excepting the County's reserved authority described above.
27. **Survival.** Any promise or condition set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination but which by its terms is to survive the termination of this Agreement, will survive the expiration or earlier termination of this Agreement and will remain fully enforceable thereafter.

28. **No Benefit to Third Parties.** The Parties are the only parties to this Agreement and are the only parties entitled to enforce its terms, except as otherwise specifically provided in this Agreement. There are no third-party beneficiaries.

29. **Entire Agreement.** This Agreement, including its exhibits attached hereto, constitutes the entire agreement between the Parties as to the subject matter.

30. **Notices.** All notices will be in writing and may be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

County: Attn: County Manager
P.O. Box 5000
Vancouver, WA 98666-5000

With a copy to: Taylor Hallvik
Deputy Prosecuting Attorney
1300 Franklin Street
Vancouver, WA 98660

Owner: Ten Talents Investments 18, LLC
275 W 3rd Street, Suite 300
Vancouver, WA 98660

With a copy to: LeAnne M. Bremer
Miller Nash Graham & Dunn, LLP
500 Broadway Street, Suite 400
Vancouver, WA 98660

Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

31. **Interpretation of Agreement; Status of Parties.** This Agreement is the result of arm's-length negotiations between the Parties and will not be construed against any Party by reason of its preparation of this Agreement. Nothing contained in this Agreement will be construed as creating the relationship of principal and agent, partners, joint ventures, or any other similar relationship between the Parties.

32. **Future Assurances.** Each of the Parties will promptly execute and deliver such additional documents and will do such acts that are reasonably necessary, in connection with the performance of their respective obligations under this Agreement so as to carry out the intent of this Agreement.

SIGNATURES ON FOLLOWING PAGE

DEVELOPMENT AGREEMENT – TEN TALENTS - CLARK COUNTY - 16

Ten Talents Investments 18, LLC

By: _____
Hurley Development, LLC, Manager
By: Ryan Hurley, Manager

Dated: _____

Clark County

By: _____

Its: _____

Dated: _____

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that he is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of Hurley Development, LLC, Manager of Ten Talents Investments, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2020.

NOTARY PUBLIC for the State of Washington, Residing in
the County of Clark
My Commission Expires:_____

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the __ (title) of Clark County, Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2020.

NOTARY PUBLIC for the State of Washington, Residing in
the County of Clark
My Commission Expires:_____

Approved as to form:

County Attorney

EXHIBIT INDEX

EXHIBIT A - LEGAL DESCRIPTION OF DEVELOPER PROPERTY

EXHIBIT B – SKYVIEW STATION

EXHIBIT C - ROUNDABOUT DESIGN

EXHIBIT D - DECISION

EXHIBIT E - COVENANT

EXHIBIT A
LEGAL DESCRIPTION OF DEVELOPER PROPERTY

Tax Parcel No. 185726-000

14019 NE 10th Avenue, Vancouver, WA 98685

THE LAND REFERRED TO HEREIN BEELOW IS SITUATED IN THE CITY OF VANCOUVER, COUNTY OF CLARK, STATE OF WASHINGTON AND IS DESCRIBED AS FOLLOWS:

The North quarter (also known as the North half of the North half) of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT that portion lying within NE 10th Avenue.

ALSO EXCEPT that portion conveyed to Clark County by deed recorded September 21, 2006 under Auditor's File No. 4225602.

Tax Parcel No. 185727-000

13909 NE 10th Avenue, Vancouver, WA 98685

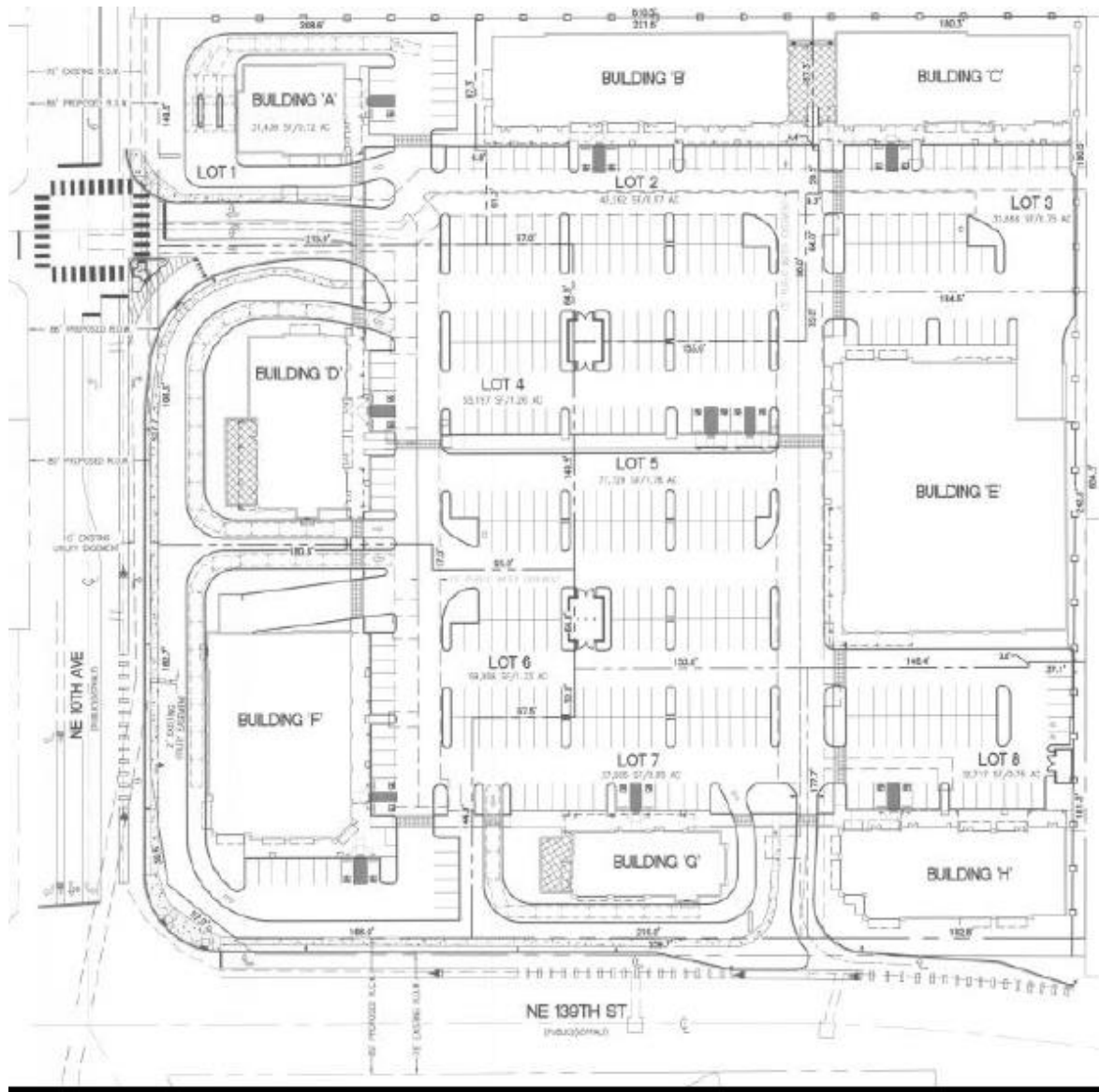
THE LAND REFERRED TO HEREIN BEELOW IS SITUATED IN THE CITY OF VANCOUVER, COUNTY OF CLARK, STATE OF WASHINGTON AND IS DESCRIBED AS FOLLOWS:

The South $\frac{3}{4}$ of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT any portion lying within NE 139th Street and NE 10th Avenue.

ALSO EXCEPT that portion conveyed to the State of Washington, Department of Transportation, recorded under Clark County Auditor's File No. 4763611 on May 12, 2011.

EXHIBIT B
ILLUSTRATION OF CURRENT SKYVIEW STATION



**EXHIBIT C
ROUNDAABOUT DESIGN**



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**EXHIBIT D
DECISION**

**EXHIBIT E
COVENANT**